

**BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of	:	Class II Proceeding Under Section
	:	309(g)(2)(A) of the
Henrico County	:	Clean Water Act
4301 Parham Road	:	
Henrico, VA 23228	:	EPA Docket No. CWA-03-2011-
	:	0139
	:	
	:	CONSENT AGREEMENT
Respondent	:	and FINAL ORDER
	:	

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order ("CAFO") is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III ("Complainant"), and Henrico County ("Henrico" or "Respondent"), pursuant to Section 309(g) of the Clean Water Act, 33 U.S.C. § 1319(g), and the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits* ("*Consolidated Rules*"), 40 C.F.R. Part 22. The parties have agreed that this CAFO resolves Complainant's civil claims pertaining to violations of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, alleged in an administrative Complaint filed on April 6, 2011.
2. Pursuant to Section 309(g) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1319(g), and the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19, any person violating the CWA is liable for an administrative penalty under Section 309(g) of the Act. Violations occurring after January 12, 2009 subject the violator to civil penalties in an amount not to exceed \$16,000 per day for each day the violation continues, up to a maximum of \$177,500.

II. FINDINGS OF FACT AND JURISDICTIONAL ALLEGATIONS

3. Respondent neither admits nor denies the factual allegations contained in Paragraphs 3 through 52 of the administrative Complaint filed on April 6, 2011.
4. Respondent admits the jurisdictional allegations contained in the Complaint.

III. CONCLUSIONS OF LAW

5. As described in the Findings of Fact and Jurisdictional Allegations referred to in Section II, above, Respondent neither admits nor denies it has violated Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and likewise neither admits nor denies that it is therefore liable to the United States for a civil penalty in accordance with Section 309(g) of the Act, 33 U.S.C. § 1319(g).

IV. CONSENT AGREEMENT AND FINAL ORDER

6. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
7. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
8. Each party to this action shall bear its own costs and attorney fees.
9. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.
10. The parties agree that settlement of this matter is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.
11. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent CONSENTS to pay a civil penalty in the amount of eighty-two thousand dollars (\$82,000) in full and final settlement of EPA's claims for civil penalties for the violations alleged herein. Failure to comply with the payment terms will result in EPA seeking additional penalties under the Consent Agreement.
12. Respondent shall pay the total administrative civil penalty of eighty-two thousand dollars (\$82,000) for the violations alleged in this CAFO within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c), by either mailing a cashier's check or certified check, or wire transfer, or automated transaction for the penalty to "Treasurer, United States of America," in one of the following ways:

By regular mail:

Regional Hearing Clerk
U.S. EPA Region III
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

By overnight delivery:

U.S. Bank, Government Lock Box 979077
US EPA Fines and Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
314-418-1028

By Wire Transfer:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

By Automated Clearinghouse (ACH):

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - checking
Physical location of US Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737

Respondent shall send notice of such payment, including a copy of the check or automated transaction, to the Regional Hearing Clerk at the following address:

Lydia Guy

Regional Hearing Clerk
Mail Code 3RC00
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Pamela J. Lazos
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

13. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. § 1251, *et seq.*, or any regulations promulgated thereunder.
14. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains

delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

15. This Consent Agreement and Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.
16. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any other applicable provision of law.
17. The penalty specified above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.
18. Entry of this CAFO is a final settlement of all civil violations alleged in the Complaint. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in the Complaint if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.
19. In addition, EPA shall have the right to seek additional penalties under this CAFO should Respondent fail to fulfill its obligations under this CAFO.
20. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.
21. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.


V. **EFFECTIVE DATE**

22. This CAFO shall become final and effective thirty (30) days after it is lodged with the Regional Hearing Clerk, pursuant to Section 309(g)(5), 33 U.S.C. § 1319(g)(5).


**FOR THE COMPLAINANT, UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY:**

Jon M. Capacasa
Director, Water Protection Division
U.S. EPA Region III

FOR RESPONDENT HENRICO COUNTY:



John A. Vithoulkas
Acting County Manager
County of Henrico, Virginia

APPROVED AS TO FORM

Asst. **COUNTY ATTORNEY**

Philadelphia, Pennsylvania 19103-2029

Shawn M. Garvin
Regional Administrator

CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the **Regional Hearing Clerk**, EPA Region III, the original Consent Agreement and Final Order, and that copies of this document were sent to the following individuals in the manner described below:

By hand delivery:

Regional Judicial Officer Renee Sarajian
EPA Region III
1650 Arch St.
Philadelphia, PA 19103

By first class mail:

Benjamin A. Thorp, Esquire
County of Henrico
Office of the County Attorney
4301 East Parham Road
Henrico, Virginia 23228-2752

Date: _____

Pamela J. Lazos
Senior Assistant Regional Counsel
US EPA Region III